Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

COMMENTS OF VERIZON WIRELESS

VERIZON WIRELESS

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SUMMARY

In the *Notice,* the Commission begins to reexamine the current inter-carrier compensation scheme, including the flow of payments between LECs and CMRS providers, to determine whether a bill-and-keep approach would serve the public interest. Verizon Wireless supports the Commission's initiative and strongly urges the Commission to adopt uniform national rules for LEC-CMRS interconnection that include an appropriate form of bill-and-keep. National rules will streamline the LEC-CMRS interconnection process, and Section 332 provides the Commission ample authority to adopt such rules.

With the necessary caveat that the Commission must select a proper form of bill-and-keep to optimize its benefits, bill-and-keep will serve the public interest for a variety of reasons. Under the Commission's current rules, the negotiation and/or arbitration of interconnection arrangements is a typically lengthy and costly process. Even after parties sign a contract, billing and dispute resolution often consume even more resources. In addition, if the Commission retains the Calling Party Network Pays ("CPNP") regime, all carriers will have to continue to develop mechanisms to measure traffic, which are expensive and difficult to build and maintain. Bill-and-keep will relieve that need for substantial investment by CMRS carriers and LECs in billing and recording systems. Bill-and-keep will therefore minimize administrative inefficiencies.

Because bill-and-keep removes inefficiencies, it will promote competition. Bill-and-keep will make CMRS even more competitive because prices will solely reflect each carrier's own costs without reference to the additional costs imposed by a host of

different carriers or the vagaries of litigation. Accordingly, under bill-and-keep, operational efficiencies, quality of service, and customer service, and not regulatory policies or inter-carrier payments, will ultimately decide the winners and losers in the marketplace.

For these reasons, the Commission should adopt a bill-and-keep mechanism for LEC-CMRS interconnection that permits carriers to recover their costs of originating and terminating calls from their own end user customers. Verizon Wireless submits, however, that the two approaches to bill-and-keep proposed by Commission staff, COBAK and BASICS, do not provide the appropriate incentives for all carriers. The Commission should develop an alternative mechanism that is consistent with certain principles, including symmetry, efficiency, administrative simplicity, and technology neutrality. Such a mechanism should permit parties to agree to other arrangements, but it should be the default if carriers cannot agree.

Even if the Commission decides to retain the existing CPNP compensation model for LEC-CMRS interconnection, certain actions are critical. The Commission should: (1) adopt a rebuttable presumption that the wireless Mobile Switching Center ("MSC") serves comparable geography as a tandem and therefore qualifies for the tandem interconnection rate; (2) require LECs to offer transiting service; (3) confirm that the MTA continues to define the local calling scope for LEC-CMRS interconnection; and (4) deal with issues related to interconnection with rural telephone companies.

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Verizon Wireless hereby submits its comments on the *Notice of Proposed Rulemaking ("Notice")*[1] in the captioned proceeding. Verizon Wireless urges the Commission to transition to an appropriate form of bill-and-keep for LEC-CMRS interconnection that permits all carriers to recover the costs of originating and terminating calls from their end user customers. If for any reason the Commission elects not to adopt bill-and-keep for LEC-CMRS interconnection, it should nonetheless make certain changes to its existing rules to streamline the LEC-CMRS interconnection process.

BACKGROUND

With the *Notice*, the Commission begins to reexamine the current inter-carrier compensation scheme with the goal of adopting a unified set of rules to govern the flow of payments between all telecommunications carriers, including LECs and CMRS carriers. The Commission undertakes this comprehensive review with the specific

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[1] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-02, *Notice of Proposed Rulemaking* (rel. April 27, 2001) ("*Notice*").

objective of exploring the feasibility of replacing the existing compensation mechanisms with a bill-and-keep approach. Although the Commission's current rules permit states to impose bill-and-keep mechanisms when traffic is relatively balanced, the Commission seeks comment on whether it should adopt certain bill-and-keep models and its authority to do so even in situations where traffic is not in balance. In the process, the Commission properly questions the long-standing regulatory assumption that calls between networks benefit only the originating caller.

Verizon Wireless supports the Commission's initiative to reevaluate its inter-carrier compensation rules. Since the 1996 Act and the Commission's *First Interconnection Order,*[2] it has become increasingly clear that the Commission's current inter-carrier compensation regime contains certain flaws that promote inefficiencies and provide carriers with incentives to impose costs on other carriers. The Commission's goal in this rulemaking should be to remedy these defects, while at the same time promoting competition and reducing opportunities for arbitrage.

The task that the Commission undertakes is an important one because, as Congress and the Commission have recognized, fair interconnection rules play a critical role in promoting competition. An interconnection regime that strips away the need for complex and costly interconnection negotiations will leave carriers free to focus their resources on competing in the marketplace based solely on the recovery of their own costs from their customers. As carriers strive to drive costs out of their businesses

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[2] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order,* 11 FCC Rcd 15499 (1996) ("*First Interconnection Order*").

without reference to the varying agreements that they are able to obtain from interconnecting carriers in different states, technical and geographical limitations will dissipate. Ultimately, consumers will benefit.

To move to this paradigm, the Commission should modify its current rules to adopt uniform national rules for LEC-CMRS interconnection and order a default form of bill-and-keep for LEC-CMRS interconnection that permits carriers to recover their costs of originating and terminating calls from their own end user customers. Even if the Commission retains the existing Calling Party Network Pays ("CPNP") compensation model for LEC-CMRS interconnection, it should: (1) adopt a rebuttable presumption that the wireless Mobile Switching Center ("MSC") serves comparable geography as a tandem and therefore qualifies for the tandem interconnection rate; (2) require LECs to offer transiting service; (3) confirm that the MTA continues to define the local calling scope for LEC-CMRS interconnection; and (4) deal with issues related to interconnection with rural telephone companies.

I. THE COMMISSION SHOULD ADOPT UNIFORM NATIONAL RULES FOR LEC-CMRS INTERCONNECTION

In the *Notice,* the Commission states that it is conducting this review of the inter-carrier compensation scheme in response to increasing competition and the proliferation of new products and services, particularly in the CMRS marketplace.[3] The Commission seeks comment on the appropriate public policy goals for establishing inter-carrier

[3] *Notice* ¶ 2.

compensation regulations, including whether efficiency should be the sole or paramount goal of inter-carrier compensation policy.[4] The Commission aptly states that market-oriented approaches may provide more timely adjustments and avoid distortions resulting from incorrect or outdated regulatory decisions, and that it would be reasonable to consider whether a particular inter-carrier compensation mechanism will resolve problems associated with the current regime or create new problems.[5] The Commission also solicits comment on the scope of its jurisdiction over LEC-CMRS interconnection under 47 U.S.C. § 332, particularly with respect to adopting a bill-and-keep regime for LEC-CMRS interconnection.[6]

Verizon Wireless strongly urges the Commission to adopt uniform national rules for LEC-CMRS interconnection that include an appropriate form of bill-and-keep. Section 332 provides the Commission ample authority to adopt such rules. As detailed below, national rules will streamline the LEC-CMRS interconnection process, which will greatly enhance the efficiency of the current regime and serve the public interest by promoting competition.

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4 *Id.* ¶ 33.

5 *Id.* ¶ 35.

6 *Id.* ¶ 85.

A. The Commission Has Jurisdiction Under Section 332 To Establish A Uniform National Regulatory Framework For LEC-CMRS Interconnection

When Congress enacted the Omnibus Budget Reconciliation Act of 1993,[7] it deliberately chose a federal regulatory framework for CMRS, stating that its goal with respect to CMRS was to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[8] Further, when Congress added Section 332, it also amended Section 2(b) of the Act to exempt commercial mobile services from the general principle that states retain jurisdiction over intrastate communications services by wire and radio.[9] As a result, states were preempted from imposing entry regulations on the provision of CMRS under any circumstances, and they were also barred from regulating CMRS rates, even rates for intrastate CMRS, unless they could demonstrate that market conditions failed to adequately protect consumers.[10]

The Commission has long regulated LEC-CMRS interconnection.[11] When Congress enacted the 1993 Budget Act, it codified and expanded the Commission's authority over LEC-CMRS interconnection. Section 332 provides: "Upon reasonable request of any person providing commercial mobile radio service, the Commission shall

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7 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 392 (1993) ("1993 Budget Act").

8 H.R. Report No. 103-11, 103rd Cong., 1st Sess. 260 (1993) ("House Report").

9 *See* 47 U.S.C. § 152(b).

10 47 U.S.C. § 332(c)(3)(A).

11 *See* The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Declaratory Ruling,* 2 FCC Rcd 2910, 2912 (1987) ("*Interconnection Declaratory Ruling*").

order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act."[12] Congress was clear that this subsection was integral to the overall regulatory framework that it created for CMRS carriers: "The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."[13]

Even after the enactment of the 1996 Act that created a new federal framework for interconnection under Sections 251 and 252, the Commission has consistently and correctly maintained that Section 332 provides it with independent jurisdictional authority over LEC-CMRS interconnection. In particular, although the Commission relied upon Sections 251 and 252 when it adopted LEC-CMRS interconnection rules after the 1996 Act, it also made clear that the 1996 Act did not repeal its Section 332 jurisdiction over LEC-CMRS interconnection.[14] Although the Commission declined at the time to define the precise extent of that jurisdiction, it carefully preserved its option to reexamine this decision and invoke its jurisdiction under Section 332 to regulate LEC-CMRS interconnection.[15] The Commission stated that such action would be necessary if the regulatory scheme established under Section 251 and 252 failed to address

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12 47 U.S.C. § 332(c)(1)(B).

13 House Report at 261.

14 *First Interconnection Order* ¶ 1023.

15 *Id.*

sufficiently the problems that CMRS providers encounter in obtaining interconnection under just, reasonable, and nondiscriminatory terms and conditions.[16]

Even though the Commission did not itself define the precise extent of its authority pursuant to Section 332 over LEC-CMRS interconnection when it implemented the 1996 Act, the Eighth Circuit confirmed the Commission's authority to adopt rules of special concern for LEC-CMRS interconnection. In the *Iowa Utilities* case, the Court invalidated the Commission's interconnection pricing rules adopted pursuant to Sections 251 and 252 as they applied to telecommunications carriers generally,[17] but it upheld a number of those same rules as applied specifically to LEC-CMRS interconnection.[18] Accordingly, the Court found that the Commission has broader authority under Section 332 over LEC-CMRS interconnection than it has over other telecommunications carriers under Sections 251 and 252 of the Act. In reaching this decision, the Court stated that it was guided by several factors: (1) the preemptive language of Section 332(c)(3)(A); (2) the obligation imposed on LECs in Section 332(c)(1)(B) to interconnect with CMRS providers; and (3) the exemption of CMRS from the restrictions of Section 2(b) of the

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16 *Id*.

17 *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 800 (8th Cir. 1997), aff'd in part and rev'd in part on other grounds, *AT&T Corp. v. FCC*, 525 U.S. 366 (1999). In *AT&T Corp. v. FCC*, the Supreme Court reversed the Eighth Circuit's findings in *Iowa Utilities* regarding the Commission's jurisdiction under Sections 251 and 252. The Supreme Court ruled that, given the Commission's authority under Section 201(b) to adopt any rules necessary to further the purpose of other sections of the Act, the interconnection rules at issue in *Iowa Utilities* were in fact within its jurisdiction under Sections 251 and 252. *Id.,* 525 U.S. at 378-85.

18 *Iowa Utilities,* 120 F.3d at 800 n.21. The Court upheld 47 C.F.R. §§ 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717 as applied to CMRS providers. CMRS providers indicated in arguments before the Court that these rules were particularly crucial to LEC-CMRS interconnection.

Act.[19] Based on these factors, the Court concluded that "the Commission has the authority to issue the rules of special concern to the CMRS providers."[20]

Consistent with the *Iowa Utilities* decision, the D.C. Circuit in the recent *Qwest* case again affirmed the FCC's additional authority under Section 332 to adopt "rules of special concern" for LEC-CMRS interconnection.[21] In the *Qwest* case, several LECs claimed that the Commission lacked authority to prohibit them from charging CMRS carriers for LEC-originated traffic under Section 51.703(b) of the Commission's rules.[22] In support of their position, the Petitioners argued that the Court in the *Iowa Utilities* case did not really find that Section 332 was the statutory authority for upholding Section 51.703(b), but that it instead simply used Section 332 to parry a claim that Section 51.703(b) and other regulations were invalid intrusions on state authority under Section 2(b).[23] The D.C. Circuit disagreed, concurring with the Eighth Circuit that Section 332 provided the Commission authority independent of the 1996 Act to adopt Section 51.703(b) and other "rules of special concern" for LEC-CMRS interconnection.[24]

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19 *Id.*

20 *Id.*

21 *Qwest v. FCC,* 252 F.3d 462, 464 (D.C. Cir. 2001).

22 47 C.F.R. § 51.703(b).

23 *Qwest,* 252 F.3d at 466.

24 *Id.* The Court also pointed out that no party petitioned for certiorari on this issue on appeal of the case to the Supreme Court. *See id.,* 252 F.3d at 464.

B. A National Framework For LEC-CMRS Interconnection Is In The Public Interest

With its jurisdictional authority under Section 332(c) to adopt rules for LEC-CMRS interconnection confirmed in *Iowa Utilities* and *Qwest*, the Commission should move aggressively to adopt a separate uniform national regulatory regime for LEC-CMRS interconnection. Verizon Wireless has found that the primary inefficiency associated with the current inter-carrier compensation regime is the need to negotiate with a carrier in a particular state and then negotiate with the same or another carrier over the same issues in other states. For wireless carriers, many of which operate in multiple states or have nationwide footprints, this is an extremely burdensome and wasteful process. Unfortunately, these inefficiencies extend well beyond the negotiation process. The states have frequently had varying interpretations of the FCC's rules, resulting in a patchwork of requirements nationwide.

Uniform national rules for LEC-CMRS interconnection will remove much of the costly, state-by-state duplication inherent in today's regime. As described in greater detail below, the experience of Verizon Wireless and other wireless providers over the past five years demonstrates an urgent need for uniform nationwide rules for LEC-CMRS interconnection. During this period, CMRS providers have been forced to struggle with a wide variety of disparate and sometimes conflicting state-based interconnection rights and obligations. This regulatory patchwork has imposed a substantial burden on wireless carriers that operate in multiple states or have nationwide footprints. In some instances, Verizon Wireless and other providers must negotiate and arbitrate the same issues with the same LECs in different states, a highly inefficient outcome from an administrative perspective.

In developing this new framework, the Commission need not rely on Section 332 as an exclusive source of jurisdiction or preempt all state authority over LEC-CMRS inter-carrier compensation. Such a regime does not have to conflict with or require forbearance from Sections 251 and 252 of the Act, nor does the Commission need to preempt the states to give effect to these new rules. Rather, as the Commission recognized in the *First Interconnection Order*, considerable overlap exists between the Commission's Section 332 jurisdiction and its authority under Sections 251 and 252.[25] Both statutory sources provide jurisdictional grounding for a uniform set of national rules that would streamline LEC-CMRS interconnection and eliminate the opportunity for conflicting state requirements, while maintaining a reasonable level of participation by state commissions. Indeed, adopting uniform nationwide rules that implement Sections 251 and 252 in the context of LEC-CMRS interconnection are just the kind of "rules of special concern" that the Commission is authorized to adopt under Section 332.

Rather than preempt the role of the states entirely, the Commission should adopt clear rules that the states can apply consistently. Adopting clear and detailed rules for LEC-CMRS interconnection will significantly reduce the likelihood of disputes and conflicting state interpretations of the FCC's rules. The Commission should also consider adopting rules that include model contract language. This would preserve a role for the states and minimize the potential for disputes that might arise when states attempt to implement the FCC's uniform national rules.

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[25] *First Interconnection Order* ¶ 1023.

C. Section 332 Provides The Commission With Authority To Adopt Bill-and-Keep

One of the uniform national rules for LEC-CMRS interconnection that the Commission should adopt is an appropriate form of bill-and-keep for LEC-CMRS traffic. Under Section 332, the Commission has plenary authority over the kind of interconnection to which CMRS providers are entitled.[26] This includes the requirement for LECs and CMRS carriers to abide by the principle of mutual compensation, under which each carrier compensates the other for the reasonable interconnection costs it incurs to terminate the other carrier's traffic.[27] The Commission can mandate a bill-and-keep regime for LEC-CMRS interconnection because Section 332 gives it authority to determine how the principle of reciprocal compensation contained in Sections 251 and 252 of the Act should apply to LEC-CMRS traffic.

The Commission recently considered the scope of its pre-1996 Act authority under Section 332 to adopt mutual compensation requirements in its July 6, 2001 opinion in the *AirTouch Cellular v. Pacific Bell* case.[28] In this complaint proceeding, AirTouch Cellular alleged that Pacific Bell violated Section 20.11 of the Commission's rules[29] when it failed to pay mutual compensation to AirTouch Cellular in connection with

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[26] The Commission has preempted state and local regulation of the kind of interconnection to which CMRS providers were entitled, finding that separate interconnection arrangements for interstate and intrastate CMRS are not feasible. Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, *Second Report and Order,* 9 FCC Rcd 1411, 1498 (¶ 230) (1994) ("*CMRS Second Report and Order*").

[27] *Id.* ¶ 232.

[28] AirTouch Cellular v. Pacific Bell, *Memorandum Opinion and Order,* File No. E-97-46, FCC No. 01-194, 2001 FCC LEXIS 3594 (rel. July 6, 2001) ("AirTouch Cellular").

[29] 47 C.F.R. § 20.11. This rule had codified the Commission's mutual compensation ruling in the *CMRS Second Report and Order.*

terminating traffic that originated on Pacific Bell's facilities. Pacific Bell argued that the obligation to pay mutual compensation under Section 20.11 only applied to interstate traffic prior to the 1996 Act because the Commission did not preempt the authority of the states to regulate mutual compensation or other aspects of interconnection rates.

The Commission rejected Pacific Bell's argument that the Commission had not preempted state regulation of mutual compensation, finding that nothing in Section 20.11 limited its coverage to interstate services.[30] The Commission concluded that limiting Section 20.11 to only interstate services would in fact have been nonsensical given that the rule pertained to CMRS-bound traffic that originated on the LEC network, which because of the prohibition on the provision of interLATA services at the time under the Modified Final Judgment would almost entirely have been intrastate traffic.[31] The Commission also noted that the language addressing mutual compensation in the Commission's *CMRS Second Report and Order* was in stark contrast to the Commission's very next paragraph, in which the Commission limited a pricing requirement to interstate traffic: "We require that LECs shall establish reasonable charges for *interstate* interconnection provided to commercial mobile radio service licensees."[32]

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30 *AirTouch Cellular* ¶ 11.

31 *Id.*

32 *Id.* ¶ 12 (*citing CMRS Second Report and Order* ¶ 233). When it first implemented the 1993 Budget Act, the Commission required LECs to establish reasonable charges for *interstate* interconnection provided to CMRS providers, but it decided not to preempt LEC *intrastate* interconnection rates at that time. *Id.* ¶¶ 231, 233. The Commission had much earlier warned that if the intrastate component of LEC interconnection charges was unreasonably high, it might effectively preclude interconnection. This would negate the federal decision to permit interconnection, thus potentially warranting preemption of some aspects of LEC intrastate interconnection charges. *Interconnection Declaratory Ruling,* 2 FCC Rcd. at 2913. The Commission later confirmed this holding. Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, *Order,* 15 FCC Rcd 5231, 5233 (2000). The Commission also made clear that although it did not intend to regulate CMRS interconnection rates,

The Commission therefore concluded that it had plenary authority to order mutual compensation for both intrastate and interstate traffic, and that had it intended to limit Section 20.11 to interstate services, it would have clearly done so.[33]

As described above, after the 1996 Act, the Commission decided not to define precisely how its authority under Sections 201 and 332 interrelate with its authority under Sections 251 and 252 to regulate LEC-CMRS interconnection, but rather it reserved the right to do so in the future if the scheme it adopted under Sections 251 and 252 for LEC-CMRS interconnection did not sufficiently address the problems that CMRS carriers faced in obtaining interconnection.[34] The *Iowa Utilities* case, however, confirmed that Section 332 provides the Commission authority not found in Sections 251 and 252 to adopt rules with respect to LEC-CMRS reciprocal compensation. In that case, although the Eighth Circuit invalided 47 C.F.R. § 51.711(a), which required symmetrical

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Section 332 preempts state regulation of interconnection rates of CMRS providers. *CMRS Second Report and Order* ¶ 237. The Commission has not regulated CMRS interconnection rates except to the extent it has mandated that these rates be symmetrical to the LEC rates barring any special showing that asymmetrical rates are cost-justified. *See* 47 C.F.R. § 51.711(a)(1).

In the *AirTouch Cellular* case, the Commission also rejected Pacific Bell's argument that Section 20.11 could only be read to apply to interstate services because the Commission had not preempted LEC intrastate interconnection rates. The Commission concluded that its decision not to preempt LEC intrastate interconnection rates in the *CMRS Second Report and Order* did not support Pacific Bell's claim that mutual compensation was due only on interstate traffic because this simply meant that "although LECs were required to pay mutual compensation to CMRS carriers for intrastate traffic pursuant to Commission rules, the determination of the actual rates charged for intrastate interconnection would be left to the states." *AirTouch Cellular* ¶ 14. The Commission's authority to order LECs and CMRS providers to pay mutual compensation was thus entirely distinct from what the LECs could charge if there was the requirement.

[33] *Id.* ¶ 12.

[34] *First Interconnection Order* ¶ 1025.

reciprocal compensation rates between all interconnecting carriers and ILECs, it preserved the rule as applied to LEC-CMRS interconnection.[35]

Certainly, if the Commission has the authority to impose mutual compensation obligations for interstate and intrastate traffic on LECs and CMRS providers, it also has the authority to decide not to impose them or impose alternative regimes where each carrier recovers its costs from its end users. Section 332 does not require any particular method of recovery of costs, or even that CMRS carriers recover their interconnection costs from other carriers. The Commission has recognized that bill-and-keep arrangements are appropriate under certain circumstances under Sections 251 and 252.[36] Given that traffic is becoming more and more in balance, bill-and-keep for LEC-CMRS interconnection is justified even under the Commission's regime today. Section 332 and Sections 251 and 252 therefore provide the Commission with clear authority to displace the current reciprocal compensation regime with a bill-and-keep methodology and other rules of special concern to wireless described below.[37]

II. THE COMMISSION SHOULD MOVE TO BILL-AND-KEEP FOR LEC-CMRS INTERCONNECTION

When it originally implemented the 1996 Act, the Commission permitted states to impose bill-and-keep arrangements where neither carrier has rebutted the presumption of

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35 *Iowa Utilities,* 120 F.3d at 800 n.21.

36 *First Interconnection Order* ¶ 1112.

37 Indeed, the Commission should preserve all of the rights enjoyed by CMRS carriers under the Sections 251/252 regime. For example, CMRS carriers should continue to enjoy the most favored nation rights under Section 252(i) and the special anti-discrimination protections accorded under Section 251(c). 47 U.S.C. §§ 251(c), 252(i).

symmetrical rates and if the volume of originating and terminating traffic is approximately equal and is expected to remain so.[38] The Commission concluded that bill-and-keep would be justified when traffic "was roughly balanced," and the state commissions were encouraged to adopt specific thresholds to determine when traffic was "roughly balanced," although "precise traffic measurement is not necessary."[39] The Commission rejected bill-and-keep arrangements for all CMRS traffic because there had been no showing that the transaction costs to measure terminating traffic were so high as to make bill-and-keep more efficient or that the aggregate cost flows between LECs and CMRS providers were in balance.[40] There is ample evidence today, however, that the high transaction costs of current regimes and converging traffic balances justify making bill-and-keep the default mechanism for LEC-CMRS interconnection.

Foreshadowing its intent to examine bill-and-keep in this proceeding, the Commission in the *ISP Remand Order* made offering bill-and-keep for all local telecommunications traffic, including CMRS traffic, a condition for the LECs to obtain the benefit of bill-and-keep for ISP traffic in states where bill-and-keep has already been ordered.[41] The Commission has clearly recognized that bill-and-keep is an appropriate and lawful mechanism for LEC-CMRS interconnection.[42] On the basis of this

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38 *First Interconnection Order* ¶ 1111.

39 *Id.* ¶¶ 1113-14.

40 *Id.* ¶ 1117.

41 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order,* FCC No. 01-131, CC Docket No. 96-98, ¶ 89 (rel. April 27, 2001) ("*ISP Remand Order*").

42 The Commission adopted the "mirroring" rule because no party to that proceeding had justified setting different rates for ISP-bound and voice traffic. *Id.* ¶ 90.

"mirroring" rule, Verizon Wireless expects that some existing arrangements will move to bill-and-keep over the coming months. Verizon Wireless views this as positive for the telecommunications industry as a whole.

In the *Notice,* the Commission asks a series of questions about whether bill-and-keep would be an appropriate model for inter-carrier compensation, and whether bill-and-keep in general, or any specific bill-and-keep mechanism, would resolve existing inter-carrier compensation problems.[43] The Commission seeks comment on two specific bill-and-keep proposals, "Central Office Bill and Keep" ("COBAK") and "Bill Access to Subscribers-Interconnection Cost Split" ("BASICS"),[44] and questions whether there are other forms of bill-and-keep that will reduce incentives for carriers to invest inefficiently.[45]

Verizon Wireless supports shifting to a default bill-and-keep mechanism for LEC-CMRS interconnection but does not believe that COBAK and BASICS are optimal forms of bill-and-keep. Verizon Wireless urges the Commission to adopt a form of bill-and-keep for LEC-CMRS interconnection that permits carriers to recover all costs of originating and terminating calls from their own end users and that imposes symmetrical obligations on all carriers.

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43 *Notice* ¶ 52.

44 *Id.* ¶ 22.

45 *Id.* ¶ 52.

A. An Appropriate Form Of Bill-and-Keep For LEC-CMRS Interconnection Serves The Public Interest

The *Notice* details the original rationale for the "Calling Party Network Pays" ("CPNP") model that currently governs inter-carrier compensation.[46] The Commission posits that bill-and-keep may have several transactional benefits and recognizes that both calling parties and called parties can benefit from the ability to make and receive calls. The Commission, however, asks parties to explain the conditions under which the rationale for bill-and-keep is sustainable, including whether bill-and-keep can be justified when (1) only one party to the call benefits from the call; (2) the two interconnected networks have unbalanced traffic; (3) the two networks have dissimilar costs or cost structures; or (4) two networks offer different qualities of service.[47]

With the necessary caveat that the Commission must select an appropriate form of bill-and-keep to optimize its benefits, bill-and-keep will serve the public interest for a variety of reasons. As the Commission correctly notes, both calling and called parties ordinarily benefit from the ability to place and receive calls. Both the calling and called parties should therefore share equitably in the costs of all calls. As discussed below, while there might be exceptions to this general rule, the sharing of costs to reflect shared benefit is nevertheless appropriate in an overwhelming majority of cases. Bill-and-keep is a logical outgrowth of this principle.

A default bill-and-keep regime also will eliminate other inefficiencies inherent in the existing interconnection rules. Under the Commission's current rules, the negotiation

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46 *Id.* ¶¶ 19-21.

47 *Id.* ¶ 44.

and/or arbitration of interconnection arrangements is a typically lengthy and costly process. The parties may engage in a negotiation and arbitration that takes many months to complete, only to revisit the agreement that results from the process within a few years. Even after parties sign a contract, billing and dispute resolution consume even more resources. In addition, if the Commission retains the CPNP regime, all carriers will have to continue to develop mechanisms to measure traffic, which are expensive and difficult to build and maintain.[48] Bill-and-keep will relieve that need for substantial investment by CMRS carriers and LECs in billing and recording systems. Bill-and-keep will minimize administrative inefficiencies. It is because of these inefficiencies that most ILEC-to-ILEC and CMRS-to-CMRS interconnection agreements have reflected bill-and-keep arrangements.

Because bill-and-keep removes inefficiencies, it will promote competition. The CMRS industry is already highly competitive,[49] and bill-and-keep will make CMRS even more competitive because prices will solely reflect each carrier's own costs. Today the carrier with the lowest cost structure in the competitive CMRS industry must price its services based on its own costs and the costs imposed on it by other carriers. In instances where carriers are negotiating with other carriers that have the same bargaining power, a carrier's success in avoiding costs will depend on its agility and aptitude in negotiation. All too frequently, however, carriers do not have equal bargaining power and must resign

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[48] Verizon Wireless typically relies on the LECs for traffic information, which historically has led to disputes.

[49] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Sixth Report,* FCC No. 01-192, at 6 (rel. July 17, 2001) ("in part because of growing competition in the marketplace, it appears that the average price of mobile telephone service has fallen substantially during the year since the *Fifth Report,* continuing the trend of the last several years.")

themselves to painfully long negotiations, arbitration, and court appeals to be successful. This means that the carrier with the lowest cost structure may not be the most efficient, but rather the most litigious. Under the current regime, even when a carrier is successful in securing a reasonable interconnection arrangement, other carriers can face obstacles opting into the same arrangement, as permitted under 47 U.S.C. § 252(i). Bill-and-keep will allow carriers to price their services based on their own costs without reference to the additional costs imposed by a host of different carriers or the vagaries of litigation. Accordingly, under bill-and-keep, operational efficiencies, quality of service, and customer service, and not regulatory policies or inter-carrier payments, will ultimately decide the winners and losers.

The *Notice* raises several potential concerns with bill-and-keep. First, the Commission posits that bill-and-keep might not make sense in scenarios where only the caller benefits from a call.[50] The fact is that both called and calling parties benefit from the ability to place and receive calls, regardless of the wanted or unwanted nature of any particular call. This situation, however, is likely to become less and less frequent given the increasing number of ways to avoid unwanted calls (*e.g.*, caller ID, revised rules for auto-dialers, the option to have unlisted numbers, and the historical lack of CMRS directories). In addition, as the COBAK proposal details, regardless of the benefit to the calling and called party associated with any particular call, the networks originating and terminating calls both incur costs regardless of which party initiates the call.[51]

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[50] *Notice* ¶ 60.

[51] The Commission has recognized that wireless carriers incur costs whenever a caller pushes the "SEND" button on a wireless phone, and even before a conversation begins. Petition for Declaratory

Because both parties benefit from the ability to place and receive calls, relative traffic balance should not dictate how the Commission structures the reciprocal compensation regime. This is true because each carrier can recover its costs from its end users instead of the other carrier. Originating and receiving calls is part of the service provided by the carrier and the cost to provide this service should be recovered in the rates charged to the end user. To the extent that the Commission remains concerned about relative traffic balance, however, the fact is that LEC-CMRS traffic is tending toward balanced traffic flow. Whereas in 1996 traffic was approximately 80% mobile-to-land and 20% land-to-mobile, today traffic is approaching balance for a variety of reasons, including increased battery life, expanded coverage areas, improved reliability, bundled minute plans, and dramatically reduced prices. As these factors encourage more and more customers to make their mobile numbers available, thereby increasing land-to-mobile traffic, there is reason to expect that traffic will continue its trend toward equality.

Finally, with respect to the existence of dissimilar cost structures and quality of service, these are factors that consumers will take into account when they purchase services. The Commission should not use inter-carrier compensation as an equalizing mechanism to force carriers that are more efficient to subsidize carriers that are less efficient. Bill-and-keep will promote the ability of the marketplace to favor carriers with superior cost structures and quality of service.

Ruling on Issues Contained in Count I of White v. GTE, *Memorandum Opinion and Order*, WT Docket No. 00-164, ¶ 11 (rel. May 25, 2001).

B. An Appropriate Model For LEC-CMRS Interconnection Would Ensure That Each Carrier Undertakes Symmetrical Obligations

Based on the foregoing discussion, the Commission should adopt a bill-and-keep mechanism for LEC-CMRS interconnection. If the Commission decides to adopt such a mechanism, however, it must select an appropriate form of bill-and-keep. Stated another way, the Commission must not simply decide whether to order a bill-and-keep mechanism, but it also must answer the question "bill-and-keep for what?"

The Commission seeks comment on two models for bill-and-keep, COBAK and BASICS.[52] The Commission also seeks comment on the best method for allocating transport responsibilities and costs among interconnecting carriers under a bill-and-keep approach to reciprocal compensation.[53] Having carefully considered both COBAK and BASICS, Verizon Wireless submits that neither approach would accomplish the Commission's objective in this proceeding to develop an inter-carrier compensation regime that maximizes efficiencies. To address the shortcomings of the COBAK and BASICS proposals, the Commission should alternatively adopt a bill-and-keep mechanism for LEC-CMRS interconnection that, among other things, imposes symmetrical obligations on carriers.

1. Neither COBAK Nor BASICS Is An Appropriate Model For LEC-CMRS Interconnection

Commission staff must be commended for their efforts in developing the COBAK and BASICS proposals. Both are thoughtful proposals that reflect important critical

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52 *Notice* ¶ 22.

53 *Id.* ¶ 70.

thinking about the problems facing the current interconnection regime. Verizon Wireless respectfully submits, however, that neither model provides the proper mix of incentives that is necessary to promote long-term efficiencies.

Under the COBAK proposal, each carrier would bill its own end user, not the originating carrier, for all the additional costs associated with terminating a call. The calling party's network would be responsible for the cost of transporting a call between the calling party's central office and the called party's central office. COBAK would apply to all types of carriers that interconnect with the public switched telephone network and would be a default mechanism that parties would use if they could not agree to other arrangements.

COBAK presents certain implementation problems. First, it would require a regulatory body to determine on a case-by-case basis what is a "central office." The COBAK proposal recognizes the difficulty associated with defining this term. This problem is exacerbated because COBAK provides incentives for carriers to attempt to convince regulators that their central office is as close to their end user customer as possible. This by itself will not reduce negotiations, the need for regulatory intervention, or billing disputes. Indeed, this approach will increase the need for regulatory intervention over time because as new technology develops, the Commission will be required to determine whether each new switching facility is a central office.

COBAK proposes an inefficient allocation of transport costs with the idea that this will provide incentives for carriers to come to more efficient solutions.[54] This

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[54] *Id.* ¶ 47.

assumes, however, that parties have the same bargaining power and that COBAK has the same impact on all carriers. This is not the case. For example, today the only realistic alternative today is for LECs to interconnect at the CMRS MSC. There is currently no other point in the CMRS network where other carriers can interconnect because they otherwise would have to build into their own networks the ability to find the wireless customer and maintain calls as the wireless customer moves from cell to cell. Just as LECs deploy transport from the tandem to the end office, CMRS providers must transport calls from the MSC to base station controllers and cell sites. If regulators determined that a LEC end office met the definition of "central office" for the purposes of COBAK, LECs would be responsible to transport calls only to the MSC switch, whereas CMRS carriers would have the responsibility to transport calls all the way to the LEC end office. Certain LECs today deny that they have symmetrical interconnection obligations, and COBAK would only make matters worse. Rather than adopting a regime that relies on asymmetry to provide carriers with incentives, the Commission should affirm that each carrier should be compensated for the same function to the extent it performs it.[55] Under COBAK, LECs would have very little incentive to negotiate a better solution.

COBAK would also make long-term planning difficult. Under the Commission's rules since the 1996 Act, forward-looking pricing principles have applied to the tandem switching, common transport, and end office switching components of local interconnection. Pursuant to the *ISP Remand Order,* however, wireless carriers are now eligible in many cases to receive bill-and-keep in states that have ordered it or a flat-rate

[55] This should extend to the provisioning of facilities, including DS3, SONET ring, backhaul, SS7, and trunk charges.

$0.0015 per minute to cover all of these components regardless of their forward-looking costs. If the Commission were to order COBAK and the LEC end office were to be classified as the "central office" under this model, the Commission would presumably re-apply forward-looking rates to the tandem switching and common transport rate elements required for a CMRS carrier to deliver traffic to the LEC central office. This could create dramatic increases in cost for interconnecting carriers.

BASICS also requires significant regulatory intervention. BASICS requires the FCC or state commissions to engage in difficult determinations of what constitutes incremental interconnection facilities and costs. Once determined, the incremental costs are split equally. The problem is that someone, presumably the regulator, has to determine what is an incremental interconnection facility and its corresponding cost. In addition, BASICS does not solve definitional problems associated with equipment and transport. Any model that leaves these issues open from the outset invites regulatory delay and lengthy contract negotiations, billing disputes, and regulatory intervention.

2. Several Principles Should Guide The Commission As It Moves To Bill-and-Keep For LEC-CMRS Interconnection

Verizon Wireless expects that parties in this proceeding will analyze in depth the COBAK and BASICS models, and many might propose their own bill-and-keep models. As the Commission evaluates the various forms of bill-and-keep that could apply to LEC-CMRS interconnection arrangements, it should select a version of bill-and-keep that is consistent with the following principles: symmetry, efficiency, administrative simplicity, and technology neutrality.

As a threshold issue, any bill-and-keep mechanism that the Commission adopts should establish symmetry as an overarching ideal. Bill-and-keep for LEC-CMRS interconnection will not provide the proper economic incentives, and thus will not be in the public interest, unless the Commission ensures that both originating and terminating carriers are able to recover all costs to originate and terminate calls from their own end users. Carriers that are forced, either through default rules or negotiation, to recover a greater share of the costs associated with originating and terminating calls will be at a competitive disadvantage because of externally imposed, inconsistent cost structures. An effective bill-and-keep regime will allow each carrier to price its services according to costs within its own network, not inter-carrier costs, thus providing carriers incentives to design their networks efficiently and reduce costs.

An appropriate bill-and-keep mechanism should also promote efficiency. The Commission should permit carriers to use their existing network economies of scale and scope to their advantage, favoring approaches that eliminate the need for either carrier to duplicate the other carrier's network. Duplication often merely drives up prices to consumers without any corresponding benefit to either carrier.

The Commission should also select a bill-and-keep framework that relies as little as possible on continuing regulatory intervention. The primary benefit of an appropriate bill-and-keep regime would be its ability to minimize the need for direct regulatory supervision of rates and terms. As stated above, a significant problem with COBAK is the need for regulators to define the "central office" in each situation and the ongoing need to update definitions as technologies change. BASICS relies on determinations about incremental costs. The most effective way to avoid regulatory intervention is for

the Commission to adopt clear default bill-and-keep rules. Parties should be free to deviate from the default mechanism by mutual agreement. Where carriers have preexisting agreements, these arrangements should be presumed reasonable and necessary unless otherwise agreed. This will decrease the likelihood of costly regulatory proceedings and litigation. To the extent that intervention is necessary to prevent the exercise of market power, it should be as simple and predictable as possible. Each carrier will benefit by having simple and easy bright-line rules, which would result in less time spent in negotiation and could increase the likelihood of industry standard agreements.

Finally, the bill-and-keep mechanism that the Commission adopts should be technology-neutral and forward-looking. As technology evolves, the FCC should not have to engage in new determinations of technological equivalence to determine how and when the bill-and-keep mechanism applies to any particular situation. This will provide the dual benefit of eliminating termination rate disputes and obviating the need for complex regulatory proceedings to characterize components of each carrier's network.

C. The Commission Must Adopt Rules To Set Limits On When Wireless Carriers Will Be Required To Establish Direct Trunking To LEC End Offices

As stated above, LECs traditionally have deployed the "spoke-and-wheel" style of infrastructure, in which several end offices subtend a tandem. CMRS carriers employ similar arrangements in which several base station controllers and cell sites are connected to a series of MSCs. In certain circumstances, LECs have claimed that they should not be required to offer interconnection at their tandems because these facilities have become

overloaded.[56] The Commission must resolve issues related to tandem exhaustion as part of the bill-and-keep mechanism it adopts for LEC-CMRS interconnection.

LECs have dealt with the issue in different ways and in some cases differently by region. To deal with tandem exhaust, for instance, SBC in the Pacific Bell region has deployed new tandems for a net gain of six tandems in the last four years. Rather than deploying new tandems in its Ameritech region, however, SBC has sought to impose a direct trunking requirement on Verizon Wireless in Michigan and Illinois at very low thresholds. LECs in other areas have utilized this "tandem exhaust" argument as a rationale to impose a requirement on CMRS carriers to establish and pay for direct trunks to LEC end offices.

The FCC's rules define the trunk-side of a tandem switch as a technically feasible point of interconnection. 47 C.F.R. § 51.305(2)(ii). In the *First Interconnection Order,* the Commission stated that "Section 251(c)(2) [of the Act] gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points."[57] The Commission has defined "technical feasibility" in 47 C.F.R. § 51.5 as follows: "Interconnection…shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment

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[56] *See*, *e.g.*, Petition of BellSouth Cellular Corp. Requesting Arbitration of Certain Terms, Conditions and Prices of an Interconnection Agreement with Indiana Bell Telephone Co., Inc., D/B/A Ameritech Indiana, Pursuant to Section 252(b) of the Telecommunications Act of 1996, Cause No. 41495-INT 01, Indiana Regulatory Commission, 1999 Ind. PUC LEXIS 395, 31-32 (Nov. 17, 1999); Application of AirTouch Cellular, Inc. for Arbitration of Interconnection Terms, Conditions, and Prices from Ameritech Michigan, Case No. U-11973, Michigan Public Service Commission, 1999 Mich. PSC LEXIS 216, 21-22 (Aug. 17, 1999) ("*AirTouch Michigan Arbitration Order"*).

[57] *First Interconnection Order* ¶ 209.

of a request by a telecommunications carrier for such interconnection…[a]n incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection…would result in specific and significant adverse network reliability impacts." The Commission's rules thus require LECs to establish when interconnection at the ILEC tandem is technically infeasible.

When deciding where to interconnect, carriers typically must decide whether it is more economical and efficient to use the tandem and common transport or to build routing tables for a specific end office and purchase dedicated facilities to that end office. A requirement to trunk direct to an end office puts this economic choice in the LEC's hands. To reduce tandem exhaust, LECs have required interconnecting carriers to establish direct trunks to the LEC's end office when traffic to a tandem destined for a particular end office reaches a certain threshold. In some cases these thresholds have been as low at 500 Centum Call Seconds ("CCS"), whereas in other cases they have been higher, such as 864 CCS or the equivalent of 1 DS1.[58] The Commission should require LECs to establish reasonable traffic thresholds as a precondition for imposing a direct trunking requirement.

Verizon Wireless arbitrated the tandem exhaust issue with Ameritech Illinois earlier this year and as AirTouch Cellular against Ameritech in Michigan in 1999.[59] In

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[58] The LECs have also refused to put their own traffic on direct facilities to CMRS carriers to avoid the use of the tandem to deliver LEC-originated traffic.

[59] In the Michigan arbitration, during negotiations SBC originally proposed a 500 CCS threshold. SBC later revised this to 700 CCS. The Michigan Public Service Commission ruled in the *AirTouch Michigan Arbitration Order* at 13, that "permitting traffic volumes to exceed 700 CCS may exhaust a tandem switch's capacity and necessitate the construction of additional switches. Nevertheless, it concludes that forcing AirTouch to use uneconomic connections and thus incur unnecessary expenses (by

the Illinois decision, the Illinois Commerce Commission ("ICC") found that although Ameritech Illinois had carried its burden to demonstrate that tandem exhaust was a problem, Verizon Wireless was not required to bear the cost of transport to trunk direct to Ameritech Illinois' end offices when traffic reaches 864 CCS.[60] Instead, the ICC ordered Ameritech Illinois to bear the cost of these facilities, and, rather than requiring direct trunking, the ICC gave Verizon Wireless the option to interconnect with Ameritech Illinois at a meet point, for instance in the tandem building at a digital cross-connect facility.[61] Consistent with FCC rules, in the Illinois case each carrier will bear its costs on either side of the meet point.[62]

The Commission should consider these issues as it develops the bill-and-keep model that it applies to LEC-CMRS interconnection. Verizon Wireless notes that facilities exhaustion is an issue for all carriers, and that all carriers should rely on their own resources to keep up with the escalating usage of their networks.

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restricting AirTouch's choice) is a less acceptable alternative than encouraging Ameritech Michigan to make needed investment in its network (by ensuring AirTouch's access to the level of choice envisioned by the FCC)." The Michigan Commission also found against Ameritech Michigan on this issue in Application of CenturyTel Wireless and Thumb Cellular for Arbitration of Interconnection Terms, Conditions, and Prices from Ameritech Michigan, MPSC Case No. U-11989 at 10 (Sept. 14, 1999); and Application of AT&T Communications of Mchigan, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Michigan pursuant to 47 U.S.C. 252(b), MPSC Case No. U-12465 at 19 (Nov. 20, 2000).

60 Verizon Wireless Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, *Order*, Docket No. 01-0007 (issued May 1, 2001) ("*VZW Illinois Arbitration Order*").

61 *Id.* at 6-7.

62 *Id.* at 7.

D. The Commission Should Confirm That The Virtual NXX Issues Identified In The *Notice* Do Not Apply To Wireless Carriers

The Commission notes that certain commenters have indicated that some LECs are inappropriately using virtual NXXs to collect reciprocal compensation for traffic that the ILEC is then forced to transport outside its local calling area.[63] The Commission seeks comment on the use of virtual central office codes (NXXs), and their impact on the reciprocal compensation and transport obligations of interconnected LECs.[64] The Commission also seeks comment on how carriers should select points of interconnection.[65] The Commission raises the virtual NXX issue only with respect to interconnection between LECs, and Verizon Wireless submits that the virtual NXX issue is not a concern for LEC-CMRS interconnection and should not have any impact on the bill-and-keep regime that the Commission adopts.

The virtual NXX problem stems from the fact that the LECs have traditionally used rating points, instead of routing points, to determine the rating of calls. As the Commission recognizes, there is a growing trend for CLECs to provide virtual Foreign Exchange service through the creative use of virtual NXXs. In this scenario, the CLEC provides dial tone for an end user via its switch. The CLEC end user will usually be in relatively close proximity to the CLEC switch because CLECs do not usually extend facilities long distances due to cost. The CLEC provides its customers local calling over a broad geographical area. CLECs will often serve Internet Service Providers ("ISPs"), which offer customers the ability to dial into modem pools. The CLEC then establishes

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63 *Notice* ¶ 115.

64 *Id*.

65 *Id.* ¶ 72.

NXXs in a variety of rate centers over the entire LATA, but all calls are routed to a single connection at the ILEC tandem. The CLEC can then assign numbers to the ISP to provide local calling in the entire LATA for all calls to the same modem pool from various communities, even though none of the CLEC's customers may be located anywhere near the ILEC's rate center.

To reach these end users in distant exchanges, the ILEC must in many cases transport calls over substantial distances. The ILEC terminates these calls in geographical areas to which the ILEC's own customers would normally pay toll to call, the ILEC receives no toll for these calls, and then the ILEC must pay the CLEC reciprocal compensation for that traffic. The ILECs have claimed, and rightly so, that the CLECs are using virtual NXXs to disguise the fact that these calls are not local calls, and that CLECs should be paying access and not receiving reciprocal compensation for these calls.

The difference between this CLEC practice and typical LEC-CMRS interconnection is significant. CLECs rarely have facilities and real customers in the proximity of the virtual NXXs, whereas CMRS providers most often have facilities and customers in close proximity to these virtual codes. The CMRS and CLEC practices also differ in that CMRS providers do not use virtual NXXs to aggregate traffic to avoid toll.

The use of virtual NXXs, also called flexible or virtual rating,[66] in the CMRS context permits the CMRS carrier to associate a wireless number with a rate center that is different from the place where the ILEC delivers the call to the CMRS provider.

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[66] Different LECs have different names for this service. For example, Ameritech calls it "Flexible Rating of NXX Codes," whereas BellSouth calls it "Virtual Designated Exchange."

Depending on the mileage between a LEC tandem and end office, there are cases where the tandem and end office are located in different rate centers such that a call from the LEC end office to the LEC tandem would be rated as a toll call for a LEC end user. As a theoretical example, in Indiana, Ameritech Indiana has end offices in the Indianapolis suburbs of Lebanon, Martinsville, and Shelbyville that all subtend Ameritech Indiana's tandem in Indianapolis. Landline customers living in any of these suburbs who call Indianapolis or any of the other suburbs from their homes dial a toll call. Because of the large geographic areas covered by most CMRS licensed areas, in this case the Verizon Wireless cellular license that covers the Indianapolis MSA, a wireless carrier can offer service to customers in the areas served by both the LEC end office and tandem, here both Indianapolis and its suburbs. Some Verizon Wireless customers would prefer to have their cellular numbers local to Lebanon, for instance, because they spend most of their time there. Obtaining a cellular number local to Lebanon will allow their families and friends in Lebanon to call them without incurring toll charges. Other Verizon Wireless customers would prefer to have their numbers local to Indianapolis because they work in the city and use their cellular phone primarily for work-related purposes. With a virtual NXX rated in Lebanon, Verizon Wireless could offer its Lebanon customers a local Lebanon number without having a direct connection to Ameritech's end office in Lebanon. In the Lebanon virtual NXX example, however, the landline customer in Shelbyville who calls the wireless customer whose number is local to Lebanon will still incur a toll call.[67] CMRS carriers do not order NXX codes in rate centers where they

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[67] This highlights a difference between flexible rating and reverse billing. Reverse billing is a service that wireless carriers have sometimes purchased from LECs whereby the wireless carrier will

cannot provide CMRS service, which is a critical distinction between CLEC and CMRS use of this service.

Flexible rating allows wireless carriers to assign wireless customers numbers that associate customers with a particular geography for all incoming calls without requiring the wireless carrier to duplicate the landline network. In the Indianapolis example, Verizon Wireless would continue to receive all calls to its Lebanon rated virtual NXX at the Ameritech Indiana tandem in Indianapolis. Virtual NXXs thus permit CMRS carriers to utilize rating mechanisms that satisfy their customers' needs, to use numbers most efficiently, and to route calls in the most efficient manner, which in this case is through the tandem.

Given the disparity between CLEC and CMRS applications of virtual NXXs, Verizon Wireless believes that the Commission can address CLEC abuses without prohibiting the legitimate use of this service by CMRS providers. As stated above, the Commission has ample authority to adopt rules of special concern for wireless carriers. Based on the mobile nature of wireless service, the Commission should find that CMRS providers do not need to establish facilities to each rate center where their customers would like to have numbers rated. It simply does not make sense to require a landline customer to pay a toll call to reach the wireless customer when the wireless customer might be a few blocks away.

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assume the toll charges associated with land-to-mobile calls in certain broad geographic areas. In the Shelbyville example, under a reverse billing arrangement covering Indianapolis and its surrounding areas, the landline customer in Shelbyville would not incur a toll charge to call the wireless customer with a number local to Lebanon because the wireless carrier would absorb this cost.

Access to virtual NXXs should also not impact the Commission's decision to adopt bill-and-keep for LEC-CMRS interconnection or the model it selects for such a mechanism. Bill-and-keep should apply at the same points, and the recovery of transport costs should be the same as established under the Commission's bill-and-keep model for LEC-CMRS interconnection.

E. The FCC Should Clarify That Signaling System 7 Messages Are Local Interconnection and Are Subject to Bill-and-Keep

Out-of-band signaling, including the Integrated Services Digital Network User Part ("ISUP") call-set up function and the Transaction Capability Application Part ("TCAP") call management function,[68] is an essential component of interconnection. This point is demonstrated by the fact that under the Commission's rules, interconnection at "[o]ut-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases" is defined as technically feasible. 47 C.F.R. § 51.305; *First Interconnection Order* ¶ 26.

Because of the inextricable nature of interconnection and signaling, Signaling System 7 ("SS7") arrangements should be subject to the Commission's rules on reciprocal compensation. Indeed, when the Commission first established guidelines for the rates to be charged for specific interconnection elements, it included signaling and call-related database services.[69] Thus, when LECs assess usage charges for the termination, switching, and transport of interconnection signaling messages for mobile-

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[68] ISUP is the SS7 call control function that sets up and takes down trunks. TCAP is an SS7 protocol that provides non-circuit related information between two or more nodes in a signaling network.

[69] 47 C.F.R. § 51.509(f).

to-land traffic, as long as interconnection occurs between two carriers' signal transfer points ("STPs"), wireless carriers should be entitled to reciprocal compensation, or bill-and-keep if ordered, for termination, switching, and transport of interconnection signaling message in the land-to-mobile direction. To the extent that each party interconnects its SS7 network at the same hierarchical level, then the Commission should clarify that SS7 should be subject to any bill-and-keep regime that the FCC adopts. In addition, the link costs associated with connecting each carrier's STP to the other carrier's STP (including diverse links) should be recovered in the same manner as other transport costs. However, to the extent that one carrier interconnects its SS7 network at a lower level than the other, the carrier that performs additional functions should be entitled to recover its costs associated with those functions.

III. REGARDLESS OF WHETHER THE COMMISSION RETAINS THE "CALLING PARTY NETWORK PAYS" MODEL OR ADOPTS BILL-AND-KEEP, SEVERAL RULE CHANGES ARE ESSENTIAL

The Commission requests comment on how, if the Commission declines to adopt or defers adopting bill-and-keep, the existing CPNP regimes could be modified to deal with the issues presented by existing regimes.[70] Certain actions are critical regardless of whether the Commission takes action on reciprocal compensation in this proceeding.

As detailed above, the current interconnection negotiation process between LECs and CMRS providers is not working smoothly. Negotiations are often full of controversy and riddled with delay. The Commission can significantly streamline this process by

[70] *Notice* ¶ 116.

confirming certain prior findings, approving rule changes, and clarifying prior actions that have been the subject of considerable dispute between LECs and CMRS providers.

A. The FCC Should Adopt A Rebuttable Presumption That The MSC Is Comparable To The LEC Tandem

In the *Notice,* the Commission clarified that under Section 51.711(a)(3) of its rules,[71] a carrier that demonstrates that its switch serves a geographic area comparable to the area served by the ILEC tandem can receive the tandem interconnection rate.[72] The Commission has, however, recognized that this rule has been the subject of considerable litigation and confusion "stemming from additional language in the text of the *Local Competition Order* regarding functional equivalency."[73]

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[71] 47 C.F.R. § 51.711(a)(3).

[72] *Notice* ¶ 105; *see also* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, and Dorothy T. Attwood, Chief, Common Carrier Bureau to Charles McKee, Senior Attorney, Sprint PCS (May 9, 2001).

[73] *Notice* ¶ 105. Illustrating the patchwork nature of state commission action, some states have ruled that competitive LECs need only establish that their switches cover a comparable geographic area in order to receive the tandem rate for call transport and termination. *See*, *e.g.*, *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of the Telecommunications Act of 1996*, Case No. 99-218, Kentucky Public Service Commission, 2000 Ky. PUC LEXIS 1190 (Mar. 2, 2000); *AT&T Communications of Indiana, Inc., TCG Indianapolis Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated, d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03, Indiana Utility Regulatory Commission, 2000 Ind. PUC LEXIS 478, at 85-87 (Nov. 20, 2000).

Other states have, however, required CLECs to meet not only this geographical test, but also to establish that their switches provide the same functionality as ILECs' tandems. *See*, *e.g.*, *Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Decision No. 00-05-051, Application No. 99-03-047, California Public Utilities Commission, 2000 Cal. PUC LEXIS 390, at 20 (May 18, 2000); *Petition of MediaOne Telecommunications of Michigan, Inc. for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Case No. U-12198, Michigan Public Service Commission, 2000 Mich. PSC LEXIS 78, at 29-30 (March 3, 2000). Yet other states have expressed uncertainty regarding whether CLECs should be required to meet both of these tests or just the "comparable geography" standard. *See Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration of Interconnection Agreement with Intermedia*

In a recent decision involving LEC-CMRS interconnection, the Ninth Circuit correctly applied the Commission's rules and confirmed that Section 51.711(a)(3) required AT&T Wireless to demonstrate only that its MSCs served a comparable geographic area to US West's tandems, and not the functional equivalency of the switches, to receive the tandem interconnection rate.[74] The Court concluded that: "Penalizing AT&T for its efficiently configured network architecture defeats the letter of § 252(d)(2)(A) and the spirit of the Act by eliminating any incentive to make economically efficient interconnection decisions."[75] The Commission now seeks comment on whether to amend Section 51.711(a)(3) to include functional equivalency language similar to that originally contained in Paragraph 1090 of the *First Interconnection Order* for determining when a carrier is eligible to receive the tandem interconnection rate. Verizon Wireless encourages the Commission not to require a functional equivalency showing to qualify wireless carriers for the tandem rate. Instead, the Commission should establish a rebuttable presumption that the wireless MSC serves a geographic area comparable to the LEC tandem.

Under any fair inter-carrier compensation regime, each carrier should bear costs associated with symmetrical functionality in its network. Functionality is difficult to determine, however, when carriers use different technologies or different infrastructures. Functional equivalency will always be subject to competing views and, with respect to

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Communications, Inc., Docket No. 991854-TP, Order No. PSC-01-1015-FOF-TP, Florida Public Service Commission, 2001 Fla. PUC LEXIS 594, at 10-12 (Apr. 24, 2001).

74 *U.S. West Communications, Inc. v. Washington Utilities and Transp. Comm'n*, No. 98-36013, 2001 U.S. App. LEXIS 14836 (9th Cir. July 3, 2001).

75 *Id.* at 12.

comparing landline networks with mobile wireless networks, a matter of comparing "apples and oranges." Accordingly, Verizon Wireless urges the Commission to step beyond this paradigm. In its place, the Commission should also establish a national rule that is simple to administer and reduces the costly litigation and arbitration to which its current rule has given rise. To accomplish this, Verizon Wireless proposes that the Commission establish a rebuttable presumption that a wireless MSC serves a comparable geographic area to the ILEC tandem unless a party disputing the comparability of the geography served by the switches can demonstrate otherwise.

Wireless carrier MSCs will almost always meet the geography test. Wireless carriers typically serve large geographic areas with just a few switches, whereas ILECs historically have had several times more end offices and usually the same or a greater number of tandems serving the same or smaller areas. The Commission can therefore safely presume that a wireless MSC will serve at least as much geography as an ILEC tandem.

The Commission should not require wireless carriers to show that the MSC is a functional equivalent to the tandem because experience has shown that such analysis adds little value. Although functionality is not a component of the FCC's rules for determining whether the tandem interconnection rate applies, certain states have determined that even if the functional equivalency test did apply, the CMRS MSC provides even more functionality than a tandem. In those states that have required Verizon Wireless to show both geographic comparability and functional equivalency, Verizon Wireless has still qualified for the tandem interconnection rate. Illinois, for

example, found that the wireless MSC is both the functional and geographical equivalent of a wireline tandem.[76] Likewise, the Michigan Commission held:

> Information submitted by the parties supports AirTouch's claim that its MSCs and MTSOs function in a manner that is similar to, and possibly better than, Ameritech Michigan's facilities. For example, it was noted that "interconnection at one AirTouch MSC allows [Ameritech Michigan] access to AirTouch's entire network." In contrast, interconnection at one of Ameritech Michigan's tandem switches "is limited to access to the end offices that reside behind that specific tandem" and interconnection at an Ameritech Michigan end office "is limited to the NXXs that reside on it." As for geographic area served, the record indicates that (due to its use of wireless technology) AirTouch's coverage is "continuous" within each county where one of its MSCs or MTSOs provide service, whereas each of Ameritech Michigan's tandem switches generally serves scattered exchanges.[77]

Given these factors, a rebuttable presumption that the wireless MSC serves a comparable geography to the ILEC tandem is appropriate. To the extent that the Commission retains the Calling Party Network Pays regime, CMRS carriers should be eligible to receive the tandem interconnection rate, and this should be the case regardless of whether the LEC carries traffic from its tandem or end office.[78]

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[76] *VZW Illinois Arbitration Order* at 10.

[77] *AirTouch Michigan Arbitration Order* at 9.

[78] If the Commission retains the CPNP structure, it should also confirm the principle that carriers are eligible to receive symmetrical pricing by directing states to eliminate set-up charges and go to unblended rate structures where the rates for transport and termination are separate. Today even when a wireless carrier qualifies for the tandem interconnection rate, additional charges such as set-up fees sometimes apply.

B. The Commission Must Establish Rules That Address Serious Rural LEC-CMRS Interconnection Problems

Many rural LECs have attempted to circumvent federal law in a variety of ways, including filing unilateral tariffs at state commissions seeking to recover costs in excess of those permitted under the Act. In determining a framework for LEC-CMRS inter-carrier compensation, the Commission must clarify the rules for interconnection between LECs and CMRS carriers in rural areas.

In direct conflict with the Commission's existing rules, rural LECs in two states, Iowa and Missouri, have filed tariffs that impose unilateral, access-like rates for termination of local wireless traffic. CMRS carriers have challenged these tariffs in state proceedings that have been costly and burdensome to litigate and, in the case of Missouri, have yielded exorbitant, one-sided rates for local rural carriers.[79] The Missouri PSC approved a state tariff that imposes non-cost based rates for termination of wireless traffic that average $0.0605 per minute of use.[80] This average rate is more than 40 times the rate cap recently approved by the FCC for termination of ISP- bound traffic (and through the "Mirroring Rule," for termination of local traffic), and significantly greater than rates negotiated by wireless carriers with rural LECs in other states. The Missouri decision has led rural carriers to file additional tariffs[81] and to seek retroactive payments from wireless

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[79] The Iowa Utilities Board has not yet released its order in the pending wireless termination tariff case.

[80] *See* In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce Its Wireless Termination Service, Missouri Public Service Commission, Case No. TT-2001-139 at 20 (Feb. 8, 2001) ("*Missouri Order*"). These rates include a "two cent adder" for contribution towards the cost of the local loop, which even the rural companies' own witness acknowledged was "arbitrary." *Id.* These local loop costs are clearly prohibited under the Commission's rules, which exclude costs of the local loop from termination compensation. *See Notice* ¶ 8 n.9.

carriers at access-like rates for termination of historical traffic, sometimes as far back as 1997.

In addition to charging arbitrarily high rates for terminating wireless traffic, many rural LECs are asserting that they can circumvent the obligation to provide reciprocal payments (or any payment, for that matter) to wireless carriers that terminate rural LEC-originated traffic. For example, emboldened by the Missouri *Order*, rural carriers are asserting that they "cannot be compelled to establish reciprocal compensation arrangements for the transport and termination of telecommunications where there is no direct connection between them and the requesting carrier."[82] In addition, the Iowa Telecommunications Association claims that member LECs that have chosen (and most have) to send their customers' calls to wireless carriers on a 1+ interexchange toll basis through an IXC, are not responsible for compensating the terminating wireless carrier.[83]

The obvious motivation underlying the rural LECs' position is financial benefit. The rural LECs have either refused to pay reciprocal compensation, as in the case where they require a direct connection, or, in the instance where intraMTA land-to-mobile calls are routed on a 1+ basis, have enjoyed a windfall because these calls are subject to originating access compensation from an IXC, rather than reciprocal compensation. Effectively, rural LECs that choose to route intraMTA calls through an IXC receive

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[81] In July and August 2001, a number of rural carriers filed amendments to their wireless termination tariffs in Missouri. These amendments propose charging an additional, unidentified rate to reconnect wireless carriers to their networks.

[82] *See* Initial Brief of Iowa Telecommunications Association, In re: Exchange of Transit Traffic, State of Iowa, Department of Commerce Utilities Board, Docket No. SPU-00-7 (DRU-00-2) at 17 (May, 2001). This brief was filed on behalf of 150 member companies in Iowa.

[83] *See* ITA Initial Brief at 41.

originating access compensation from the IXC and avoid any payment of reciprocal compensation to the wireless carrier that transports and terminates such traffic. The Commission should address these issues.

1. The Commission Should Affirm That Indirect Interconnection Is A Form Of Local Interconnection And Is Subject To Reciprocal Compensation

As the Commission recognized in the *Notice*, indirect interconnection is common in rural areas where volumes of traffic are low. Wireless carriers "can elect to deliver CMRS-originated calls to a large ILEC (typically an RBOC) for routing to the rural LEC carriers,"[84] and "can connect to other LEC end offices and other carriers via a LEC end office switch."[85] Indirect interconnection is both practical and consistent with the objectives of the Act. The Commission should confirm that this "transiting" function is an obligation that all LECs must undertake.

Section 332(c)(1)(B) provides that "upon reasonable request of any…[CMRS provider], the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act." As stated above, when the FCC first implemented Section 332, it found that separate interconnection arrangements for interstate and intrastate CMRS are not feasible, and that state regulation of the right and type of interconnection would negate the important federal purpose of ensuring CMRS interconnection to the interstate network.[86] The FCC therefore

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84 *Notice* ¶ 91, n.148.

85 *Id.* ¶ 91.

86 *CMRS Second Report and Order* ¶ 231.

preempted state and local regulation over the kind of interconnection to which CMRS providers are entitled.[87] The Commission ordered LECs to provide any interconnection arrangement requested by a CMRS provider except if the LEC could demonstrate that it is not technically feasible or economically reasonable.[88]

As demonstrated above, the 1996 Act did not revoke or alter the Commission's authority under Section 332 to order LECs to provide interconnection arrangements such as the transiting function to wireless carriers. The transiting services that LECs provide today establish vital links between rural areas and wireless customers. These "transiting" services provide tandem switching and, in some cases, common transport to wireless carriers, and ILECs can most efficiently provide these services because they are already interconnected with the rural LECs. The Commission should confirm pursuant to Section 332 that transiting is a form of local interconnection that must be provided by LECs to CMRS providers.

The availability of transiting service is critical for a variety of reasons. The best way to ensure cost-effective service availability to rural customers is to allow wireless carriers to interconnect indirectly with rural carriers through the common trunks of larger LECs. The time and expense of provisioning direct trunks between each wireless carrier and the hundreds of rural LECs would be significant and could diminish service materially and increase costs for rural customers. At a time when the Commission is seeking to expand the availability of telecommunications services across rural America, LECs should not be allowed to deny wireless carriers access to transiting services.

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87 *Id.*

88 *Id*. ¶ 234.

2. The FCC Should Preserve The MTA To Define The Scope Of The CMRS Local Calling Area

Regardless of whether CMRS carriers terminate their traffic to rural LECs directly or indirectly, the Commission should also confirm that reciprocal compensation is appropriate when terminating intra-MTA CMRS calls. In Iowa, the rural carriers argued that "not all wireless traffic that originates and terminates within the same MTA is subject to local reciprocal compensation."[89] They further contend that access rates are appropriate when a wireless carrier interconnects indirectly with a rural LEC by transiting an ILEC's network, because in such instance, the transiting ILEC is acting as an interexchange carrier.[90] The growing conflict between rural carriers and CMRS carriers in their interpretations of the Act and the FCC's rules has already generated extensive litigation at the expense of productive negotiations. Further litigation in additional states is certain to follow, with a high risk of inconsistent rulings that will muddy the rules of engagement between rural LECs and CMRS carriers even further.

When it implemented the 1996 Act, the FCC used its exclusive authority to define the scope of the local service area for calls to and from the CMRS network for purposes of applying reciprocal compensation obligations.[91] Specifically, the Commission at that time found that the Major Trading Area ("MTA") serves as the most appropriate definition for local service area for CMRS traffic.[92] This is important because the

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89 ITA Initial Brief at 25.

90 *Id.* at 27.

91 *First Interconnection Order* ¶ 1036.

92 *Id.*

statutory regime applies only to "local" traffic.[93] Under this regime, calls between a LEC and CMRS carrier that originate and terminate within the same MTA are subject to the Commission's reciprocal compensation rules, whereas calls that traverse MTA boundaries are subject to interstate and intrastate access charges.[94] The Commission recently reiterated in the *ISP Remand Order*[95] that the MTA defines the local calling area for CMRS originated and terminated traffic.

The MTA continues to be the most appropriate way to characterize what is "local" traffic for purposes of LEC-CMRS interconnection. The MTA is a principal license service area for broadband PCS, and, as the FCC initially found when it licensed that service, represents a logical community of interest boundary for society and commerce.[96] These considerations have not changed. Indeed, based on the Commission's 1996 ruling, many CMRS carriers have configured their networks with the MTA boundaries in mind. Any change from this paradigm would be extremely disruptive and costly to existing networks and interconnection arrangements.

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93 *Id.* ¶ 1034.

94 *Id.* ¶ 1043.

95 *ISP Remand Order* ¶ 89 n.177.

96 Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order*, 8 FCC Rcd 7700, ¶¶ 73-75 (1993) (Commission concludes that combination of MTA and BTA services areas, based on natural flow of commerce and designed to reflect newspaper circulation, economic activities, highway facilities, railroad service, and suburban transportation, may facilitate regional and nationwide roaming, allow licensees to tailor their systems to the natural geographic dimensions of PCS markets, reduce the cost of interference coordination between PCS licensees, and simplify the coordination of technical standards. MTAs will result in operation of regional systems that will promote roaming within large geographic areas and may facilitate interoperability with other PCS systems).

Regardless of the rural LECs' motivations, their position is directly contrary to the clear mandates of the Act and the Commission. Rural carriers should not be allowed to profit at the expense of wireless carriers by choosing one form of transit over another. The FCC should reiterate that rural carriers must bear the cost to transport their traffic to the CMRS carrier's MSC and must compensate CMRS carriers for the costs they bear in terminating such traffic. While the FCC's rule that "traffic to or from a CMRS network that originates and terminates within the same MTA is local and subject to transport and termination rates under section 251(b)(5)" appears clear on its face, the Commission should clarify that this same rule applies in the rural context.

3. The Commission Should Prohibit Rural LECs From Evading FCC Rules Through Unilateral Tariffs

One aspect of the Missouri *Order* is particularly disturbing: after acknowledging that "intraMTA traffic to and from a CMRS carrier is local traffic, whether or not it is transported by one or more intervening carriers"[97] and that "reciprocal compensation arrangements are a mandatory feature of agreements between the CMRS carriers and the small LECs,"[98] the Missouri PSC approved unilateral access-like rates anyway. The Missouri PSC did so by concluding that Section 251(b)(5) of the Act does not apply to the *tariffs* of LECs or ILECs.[99] The Missouri PSC determined that the only way wireless carriers could adjudicate their rights to cost-based reciprocal compensation is to request

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97 *Missouri Order* at 27, citing *First Interconnection Order* ¶ 1036.

98 *Id.*

99 *Id.* at 24. Indeed, a federal district court in *Verizon North v. Strand*, File No. 5:98-CV-38 (W.D. Mich. 2000), found that state commissions could not implement Section 251 and 252 through tariffs in circumvention of the Act's voluntary negotiation requirements.

contract negotiations with the rural LECs and, when stymied in that process, to seek arbitration before the PSC. The FCC must clarify that the choice of form (agreement or tariff) does not dictate carrier obligations and rights pertaining to interconnection. If, in fact, form does matter, the FCC must prohibit the use of unilaterally filed state tariffs to set the rates and terms of CMRS interconnection. As long as rural carriers believe they can reap access rates by filing unilateral tariffs for the termination of indirect traffic, they will have little or no incentive to negotiate or agree to fair and reasonable reciprocal compensation agreements with CMRS carriers.

4. The Commission Should Confirm That Rural LEC-CMRS Interconnection Is Subject To Bill-and-Keep

There is no basis for the Commission to exempt rural carriers from any bill-and-keep regime that it may mandate for other carriers. In fact, bill-and-keep makes sense in the rural context, due to the need for administrative simplicity on the part of both parties. The prospect of arbitrating 150 different contracts in Iowa is not a realistic option for even the largest wireless carrier. Notably, the need for administrative simplicity was one of the primary arguments proffered by the Iowa Telecommunications Association to justify using tariffs instead of agreements to set wireless termination rates.[100] In some states, such as Minnesota, wireless carriers have successfully negotiated model contracts with rural company associations, agreements that were then tailored when necessary to reflect carrier- specific costs or constraints. Unfortunately, in the wake of the Missouri decision, the Iowa rural carriers rejected the successful Minnesota approach in favor of

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[100] *See* ITA Initial Brief at 34.

filing unilateral tariffs, with rates that are far higher than any of the rates negotiated in Minnesota.[101]

Further, the Commission itself has recognized that bill-and-keep is appropriate when the transaction costs to measure terminating traffic are so high as to make bill-and-keep more efficient.[102] In order to measure the traffic exchanged with rural ILECs for the purposes of reciprocal compensation, CMRS carriers would be forced to expend significant amounts of money, including perhaps to establish separate trunk groups and facilities. These amounts would be far short of any recovery the CMRS carriers would enjoy from traffic sent to them by the rural ILECs. Accordingly, the transaction costs alone justify adoption of bill-and-keep for this type of traffic.

At a minimum, the Commission should rule that any CMRS-rural LEC traffic that is exchanged directly or indirectly without an interconnection agreement or a reciprocal compensation agreement is to be exchanged on a bill-and-keep basis until such an agreement is negotiated. Competitive neutrality and fairness dictate that bill-and-keep be the default rule for CMRS-rural LEC traffic.

IV. CONCLUSION

For the foregoing reasons, the Commission should adopt an appropriate form of bill-and-keep for LEC-CMRS interconnection and certain other critical rules to streamline the LEC-CMRS interconnection process.

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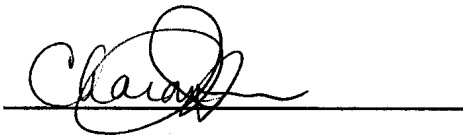
[101] *See id.* at 43.

Respectfully submitted,

VERIZON WIRELESS

By: 

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[102] *First Interconnection Order* ¶1117.

Certificate of Service

I hereby certify that on this 21st day of August copies of the foregoing "Comments of Verizon Wireless" in CC Docket 01-92 were sent by hand delivery to the following parties:

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